

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

CRIM. NO. 14-20106

Plaintiff,

HON. ROBERT H. CLELAND

v.

LORRIS UPSHAW III,

Defendant.

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**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION FOR REDUCTION OF SENTENCE [DOCKET NO. 20]**

ISSUE PRESENTED

- I. Whether a sentence reduction is warranted? No.

AUTHORITY

United States v. Swan, No. 1:12-cr-00027-JAW-02, 2016 WL 471296 (D. Me. Feb. 8, 2016).

STATUTES AND RULES

18 U.S.C. § 666(a).

18 U.S.C. §§ 3582(c)(1) and (2).

U.S.S.G. § 1B1.1.

U.S.S.G. §§ 1B1.10(a)(1) and (d).

U.S.S.G. Supp. to App. C., Am. 791.

Fed. R. Crim. P. 35(a) and (b).

I. BACKGROUND

On June 5, 2014, the defendant, Mr. Lorris Upshaw III, pleaded guilty pursuant to a plea agreement to a one count Information which charged Bribery Concerning Programs Receiving Federal Funds, in violation of 18 U.S.C. § 666(a). Mr. Upshaw, a Wayne County Clerk's Office employee, admitted that he accepted cash from felons who illegally sought Concealed Pistol Licenses (CPLs) and that he illegally assisted those felons in securing CPLs. Mr. Upshaw disputed that he had accepted more than \$5,000. At sentencing on January 29, 2015, the Court determined that Mr. Upshaw's sentencing guidelines range was 24 to 30 months' imprisonment, having found that Mr. Upshaw accepted more than \$10,000 in bribes. The Court referenced U.S.S.G. §1B1.1, in part, to determine the loss amount and corresponding guidelines. Mr. Upshaw received a sentence of 22 months' imprisonment and began serving his sentence on March 16, 2015. Mr. Upshaw seeks a sentence reduction on the basis of his completion of two financial classes while incarcerated. The law and the facts illustrate that no reduction is warranted.

II. ARGUMENT

A sentence reduction is unwarranted in this matter. Generally, a court may modify a sentence: 1) to correct an error (Fed. R. Crim. P. 35(a)); 2) for post-sentence substantial assistance to the government (Fed. R. Crim. P. 35(b)); 3) upon

motion of the Director of the Bureau of Prisons for specific circumstances (18 U.S.C. § 3582(c)(1)); or 4) where a defendant's sentencing range has subsequently been lowered by the Sentencing Commission and a reduction "is consistent with applicable policy statements issued by the Sentencing Commission" (18 U.S.C. § 3582(c)(2)). Plainly, the first three options do not apply. As to the fourth option, in 2015, the Sentencing Commission did lower the fraud guidelines applicable to Mr. Upshaw's sentence; however, the lowered guidelines do not apply retroactively. *See* U.S.S.G. Supp. to App. C., Am. 791; U.S.S.G. §§ 1B1.10(a)(1) and (d). The Sentencing Guidelines explicitly lists which amendments retroactively apply such that a sentence reduction under 18 U.S.C. § 3582(c)(2) may be warranted. U.S.S.G. § 1B1.10(d). Amendment 791 to the Sentencing Guidelines, which changed the fraud loss amounts for U.S.S.G. §1B1.1 under which Mr. Upshaw was sentenced, is not listed. U.S.S.G. Supp. to App. C., Am. 791; *see also United States v. Swan*, No. 2016 WL 471296 2016 WL 471296, *1-2 (D. Me. Feb. 8, 2016) (noting that Amendment 791 to the U.S. Sentencing Guidelines does not apply retroactively), attached as Exhibit 1. Accordingly, no basis exists to lower Mr. Upshaw's sentence.¹

III. CONCLUSION

¹ The government notes that Mr. Upshaw's completion of financial classes is laudable. The government does not lightly dismiss Mr. Upshaw's desire to return to his family and community; however, Mr. Upshaw received a reasonable sentence in view of the factors the Court considered at the time of sentencing, especially the nature of the offense.

For the foregoing reasons, the Court should deny the defendant's motion.

Respectfully Submitted,

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Date: March 4, 2016

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel and parties of record.

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